IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

Rahimbux & ors. vs. Fakir Mohammed & ors.

S.B. Civil Second Appeal No.131/1981 against the judgment and decree dated 24.2.1981 passed by the Civil Judge, Udaipur in Civil Appeal No.1/1980.

Date of Judgment: May 02, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. B.N. Calla, for the appellants.

BY THE COURT:

The appellants are aggrieved against the judgment and decree of the trial court dated 29.8.1979 by which the appellants' suit for redemption of the mortgaged property was dismissed by the trial court and which was upheld by the first appellate court by the judgment and decree dated 24.2.1981.

Brief facts of the case are that 15 plaintiffs filed the suit for redemption of the mortgaged property against one defendant Manjoor Hussain , alleging that the suit property was mortgaged by the ancestors of the plaintiffs in ten lots, at different time for different considerations, by executing separate mortgage-deeds mortgaging their share in the property for different considerations. The first mortgage-deed was executed on 23.7.1895 and the last mortgage-deed Ex.12 was executed on 15.7.1900. The plaintiffs filed the suit for redemption of all

the mortgaged properties with the allegations that the plaintiffs are the descendants of the mortgagors. According to the plaintiffs, before filing the present suit on 8.8.1969, the civil original suit no.461/Samvat Year 1993 was filed for redemption of one of the mortgaged property, wherein the defendants submitted the written statement and admitted the mortgages, therefore, the suit filed by the plaintiffs in the year 1969 is within limitation.

The defendants contested the suit filed by the plaintiffs. The defendants submitted that the plaintiffs are not the descendants of the mortgagors. The suit of the plaintiff is not maintainable because of the mis-joinder of the parties and mis-joinder of causes of action. The plaintiffs included several mortgages in one suit and several parties also in the same suit, despite the fact that the mortgages are different, properties involved are different, considerations are different, the mortgagors are different and causes of action for redemption are different. The defendant also submitted that the civil original suit no.461/Samvat Year 1993 and suit no.147 of the year 1968 were not for redemption of the mortgaged properties, which are involved in the present suit. The first suit was filed for redemption of the mortgaged property, which was mortgaged for consideration of Rs.600/-, whereas in the present case, none of the property is mortgaged for consideration of Rs.600/-. It is also submitted that as per the law applicable, Mewar

Limitation Act, suit for redemption of the mortgaged property was 15 years only, therefore, the suit of the plaintiffs is barred by time. The defendants also pleaded that they already invested amount of more than Rs.31,000/- on the properties.

The parties produced oral as well as documentary evidence. The plaintiffs submitted that original mortgage-deeds are with the defendants, therefore, they submitted the certified copies of the various mortgage-deeds, which are Ex.4 to Ex.13 on record. The trial court held that the plaintiffs failed to prove that they are the legal representatives and successors of all the mortgagors. The trial court also held that the suit filed by the plaintiff is not within period of limitation. However, the trial court held that withdrawal of the earlier suit by the plaintiff which was filed in the year 1968 with the permission of the court, entitles the plaintiffs to file fresh suit, the present one. The trial court after considering the written statement Ex.2 dated 10.3.1937, alleged to have been submitted by the defendants in one earlier litigation,i.e. the civil original suit no.461/Samvat Year 1993 , held that the defendants in that suit, did not admit the mortgages involved in the present suit. In view of the findings recorded by the trial court on various issues against the plaintiffs, the trial court dismissed the suit of the plaintiffs by the judgment and decree dated 29.8.1979.

The plaintiffs preferred regular first appeal, that too was

dismissed by the first appellate court on 24.2.1981 after upholding the finding recorded by the trial court on issue of limitation.

It will be worthwhile to mention here that it was also pleaded by the defendants that one of the mortgagors/successors of mortgagors Taj Mohammed relinquished his right to redeem the mortgage and for that purpose he executed a deed Ex.A.1 on 7.7.1942, therefore, according to the deceased defendant, the suit for redemption was not maintainable.

This appeal was admitted on 4.8.1981 after formulating the following substantial questions of law:-

> *" (1) Whether the ancestors of the defendants (respondents) in Civil Suit No.461 of Smt.Year 1993 in the written statement dated March 10, 1937, admitted the existence of the mortgage and as such acknowledged their liability ? If so whether the period of limitation is extended by the aforesaid acknowledgment ?*
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> *(2) If the answer to point NO.1 is affirmative for the plaintiffs, whether the suit for redemption is within limitation ?*
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> *(3) Whether the document Ex.A.1 dated 7.7.1942 alleged to have been signed by the Taj Mohammed amounts to relinquishment of his share in the suit property ? If so, what is the effect of it on the share of other plaintiffs ?"*

The learned counsel for the appellants submitted that the period for redemption of mortgage, as per the law applicable to the parties at the relevant time and as per Mewar Limitation Act, the properties could

have been redeemed by the mortgagors upto 31.5.1941. Before the expiry of limitation, the defendants admitted and acknowledged various mortgages by submitting written statement on 10.3.1937 in the civil original suit no.461/Samvat Year 1993 , therefore, the plaintiffs got the extended period of limitation of 15 years from 10.3.1937 and by that, the suit could have been file upto 10.3.1952. Before expiry of that limitation, in the year 1948, Rajasthan Limitation Ordinance was promulgated which came into force with effect from 1.4.1949. By this, the period of limitation was increased to 60 years. In the year 1963 the present Indian Limitation Act came into force which reduced the limitation period for filing the suit for redemption of mortgaged property from 60 years to 30 years. In the Limitation Act, 1963, the grace period of 7 years was allowed to the mortgagors whose rights have been adversely affected by the reduction of the limitation period by the Act of 1963. Therefore, the plaintiffs could have filed the suit for redemption of mortgage upto the year 1970.The plaintiffs filed the suit on 8.8.1969, therefore, it is well within limitation.

I considered this aspect of the matter. The entire basis for claiming that period of limitation upto the year 1970 is because of the extension of period of limitation as claimed by the plaintiffs is the acknowledgment of mortgage by the defendant in the written statement filed by the defendant on 10.3.1937 in the civil original suit

no.461/Samvat Year 1993. If said written statement is accepted as acknowledging the mortgages by the defendant, then only the plaintiffs' suit is in limitation and otherwise not, is the admitted position by the plaintiffs themselves.

The two courts below carefully considered the written statement of the defendant dated 10.3.1937 and held that the civil original suit no.461/Samvat Year 1993 was for redemption of the mortgaged property which was mortgaged for consideration of Rs.600/- whereas in the present suit, no property which was mortgaged for consideration of Rs.600/- is involved. The two courts below also considered that even if any admission made by the defendant in the written statement is accepted as acknowledgment of debt or mortgage of any property then that admission and acknowledgment can be only for one property and not for all the mortgages. However, both the courts were of the view that the mortgaged property in the civil original suit no.461/Samvat Year 1993 was different property than the properties involved in the present suit, therefore, the plaintiffs' suit is barred by time. This finding of fact that the mortgaged property in the civil original suit no.461/Samvat Year 1993 was different property than the properties involved in this suit, has not been challenged by the appellants by submitting any fact in the memo of appeal nor has been explained during course of arguments. Apart from above, from the plaint reading

itself, it is clear that the properties mortgaged by Ex.4 to Ex.13 are the properties mortgaged for consideration of Rs.25, Rs.50/-, Rs.300/-, Rs.212/-, Rs.325/-, Rs.236/-, Rs.32/-, Rs.50/-, Rs.251/- and Rs.125/- only. It is not the case of the plaintiffs that earlier the civil original suit no.461/Samvat Year 1993 was in relation to all the mortgaged properties and there the defendants admitted all the mortgages. In view of the above, the plaintiffs cannot get the benefit of extension of time as there is no admission of debt or mortgages involved in the present suit. The substantial questions no.1 and 2 are decided against the appellants and the finding of the two courts below on issue of limitation is upheld.

In view of the finding recorded on substantial questions no.1 and 2, substantial question no.3 became redundant and is of no consequence.

Consequentially the appeal of the appellants is dismissed.

(**PRAKASH TATIA),J.**

mlt.